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10 *Attorneys for Plaintiffs and*
11 *all others similarly situated*

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

14
15 ROBERT K. RUEGSEGGER, Jr., and
16 GIGI E. RUEGSEGGER, individually
and on behalf of all others similarly
situated,

17 Plaintiffs,

18 v.

19 CALIBER HOME LOANS, INC.; U.S.
20 BANK TRUST, N.A. AS TRUSTEE
FOR THE LSF9 MASTER
21 PARTICIPATION TRUST; LSF9
MASTER PARTICIPATION TRUST;
22 OCWEN LOAN SERVICING, LLC;
WILMINGTON TRUST, N.A.;
23 MTGLQ INVESTORS, LP; ARLP
SECURITIZATION TRUST, SERIES
24 2014-2; RESI WHOLE LOAN IV;
INVESCO IV; ALTISOURCE
25 RESIDENTIAL CORPORATION, ALL
PERSONS UNKNOWN, CLAIMING
26 ANY LEGAL OR EQUITABLE
RIGHT, TITLE, ESTATE, LIEN, OR
27 INTEREST IN THE PROPERTY
DESCRIBED IN THE COMPLAINT
28 ADVERSE TO PLAINTIFF'S TITLE,
OR ANY CLOUD ON PLAINTIFF'S

CASE NO.: 8:17-CV-00872

COMPLAINT
(CLASS ACTION)

1. Violation of the California
Homeowner Bill of Rights (Cal. Civ.
Code § 2920 *et seq.*)
2. Violation of the Rosenthal Fair Debt
Collection Practices Act (Cal. Civ.
Code § 1788 *et seq.*)
3. Violation of the Unfair Competition
Law (Cal. Bus. & Prof. Code §
17200 *et seq.*)
4. Violation of the Real Estate
Settlement Practices Act (12 U.S.C.
§ 2605)
5. Violation of the Real Estate
Settlement Practices Act (12 U.S.C.

1 TITLE THERETO; and DOES 1-20,
2 inclusive,

3 Defendants.

§ 2605)

6. Violation of the Truth In Lending Act

7. Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*)
(Jury Trial Demanded)

7 Plaintiffs Robert K. Ruegsegger, Jr. ("Robert") and Gigi E. Ruegsegger
8 ("Gigi") (collectively, "Plaintiffs") bring this Complaint individually and on behalf
9 of all others similarly situated, and allege as follows:

10 **NATURE OF THE CASE**

11 1. This case seeks to redress violations of both California and Federal
12 law for and related to (1) the wrongful filing and recording of a Notice of Default
13 ("NOD") against the homes of Class (defined herein) members, including Gigi,
14 and through such filing the initiation of non-judicial foreclosure against her
15 property by persons or entities lacking standing to assert such claims; (2) the
16 wrongful attempt to collect monies on a mortgage debt that the parties seeking to
17 collect do not own and which cannot be validated or substantiated in terms of the
18 nature, extent, or amount of the debt; (3) the knowing and repeated failure on the
19 part of Defendants to timely provide Plaintiffs and other Class members specific
20 documentation substantiating their standing to initiate a non-judicial foreclosure,
21 as well as their ability to validate the amount of mortgage debt allegedly owed
22 under the mortgage loan; and (4) the wrongful attempt to assert an invalid
23 ownership interest in contravention of Class members' clear titles.

24 **THE PARTIES**

25 2. Plaintiff Robert K. Ruegsegger, Jr. ("Robert") is, and at all times
26 mentioned herein was, an individual residing in the State of California, County of
27 Orange, and is the former husband of Plaintiff Gigi E. Ruegsegger.

1 3. Plaintiff Gigi E. Ruegsegger (“Gigi”) is, and at all times mentioned
 2 herein was, an individual residing in the State of California, County of Orange,
 3 and is the former wife of Gigi is the sole current record owner of the Property, a
 4 single family residence, located at 22442 Cassia Ln, Lake Forrest, California
 5 92630, with a legal description of:

6 PARCEL 1:

7 LOT 45 OF TRACT NO. 8384, IN THE CITY OF LAKE FOREST, COUNTY
 8 OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN
 9 BOOK 390, PAGES 11 TO 13 INCLUSIVE OF MISCELLANEOUS MAPS
 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

10 PARCEL 2:

11 AN UNDIVIDED 1/55TH INTEREST IN LOT AA THROUGH QQ
 12 INCLUSIVE OF SAID TRACT NO. 8384. EXCEPT THEREFROM FROM
 13 ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON
 14 SUBSTANCES LYING BELOW A DEPTH OF 500 FEET FROM THE
 SURFACE OF SAID LAND, BUT WITH NO RIGHT OF SURFACE ENTRY
 AS PROVIDED IN DEEDS OF RECORD.

15 (collectively, the “Property”).

16 4. Defendant Caliber Home Loan, Inc. (“Caliber”) is, and at all times
 17 mentioned herein was, a corporation organized and existing under and pursuant to
 18 the laws of the State of Delaware, and doing business in Orange County,
 19 California. From approximately May 2016 to the present time, Caliber was the
 20 loan servicer on the mortgage loan and during said time period was acting at the
 21 request and on behalf of Defendants U.S. Bank Trust, N.A. and the LSF9 Master
 22 Participation Trust.

23 5. Defendant U.S. Bank Trust, N.A. (“US Bank”) is and at all times
 24 herein mentioned was an organization of unknown type doing business in Orange
 25 County, California. On Plaintiffs’ information and belief during the acts
 26 complained of herein, Defendant US Bank was acting as Trustee for and on behalf
 27 of the LSF9 Master Participation Trust and engaged Defendant Caliber to service
 28 the loan at their request, on their behalf, and under their instruction and direction.

1 6. Defendant LSF9 Master Participation Trust (“LSF9”) is, on
2 information and belief, a securitized trust whose place of business is presently
3 unknown to Plaintiffs. LSF9 purports to be the current legal owner of a
4 Promissory Note executed by Robert Ruegsegger in 2006, secured by a Deed of
5 Trust executed by the Plaintiffs also in 2006.

6 7. Defendant Ocwen Loan Servicing, LLC (“Ocwen”) is and at all times
7 mentioned herein was a limited liability company organized and existing under
8 and pursuant to the laws of the State of Delaware, with its principal place of
9 business at 1661 Worthington Road, Suite 100, West Palm Beach, Florida 33409,
10 and was doing business in Orange County, California. From approximately 2012
11 until approximately May 2016 Ocwen was the loan servicer on the mortgage loan,
12 and was acting at the request and on behalf of Defendant Wilmington Trust,
13 National Association as Trustee for the ARLP 2014-2 Securitized trust and under
14 their instruction and direction.

15 8. Defendant Wilmington Trust, N.A. (“Wilmington”) is and at all times
16 herein mentioned was an organization of unknown type, which conducted business
17 in Orange County, California.

18 9. Defendant MTGLQ Investors, LP (“MTGLQ”) is and at all times
19 herein mentioned was limited partnership organized and existing under and
20 pursuant to the laws of the State of Delaware and doing business in Orange
21 County, California.

22 10. Defendant ARLP Securitization Trust, Series 2014-2 (“ARLP”) is
23 and at all times herein mentioned was an organization of unknown type, which
24 conducted business in Orange County, California.

25 11. Defendant Resi Whole Loan IV (“Resi”) is and at all times herein
26 mentioned was an organization of unknown type, which conducted business in
27 Orange County, California.

12. Defendant Invesco IV (“Invesco”) is and at all times herein mentioned was an organization of unknown type, which conducted business in Orange County, California.

13. Defendant Altisource Residential Corporation (“Altisource”) is and at all times herein mentioned was, a corporation organized and existing under and pursuant to the laws of the State of Maryland and doing business in Orange County, California.

14. Plaintiffs do not know the true names and capacities of the defendants sued herein as DOES 1 through 20 (“DOE Defendants”), inclusive, and therefore sues said DOE Defendants by fictitious names. Plaintiffs are informed and believe and based on such information and belief allege that each of the DOE Defendant is contractually, strictly, negligently, intentionally, vicariously liable and or otherwise legally responsible in some manner for the acts and omissions described herein. Plaintiffs will amend this Complaint to set forth the true names and capacities of each DOE Defendant when same are ascertained.

15. Plaintiffs are informed and believe and based on such information and belief allege that Defendants Caliber, US Bank, Ocwen, and Wilmington Trust and DOES Defendants 1 through 20, inclusive, and each of them, are and at all material times have been, the agents, servants or employees of each other, purporting to act within the scope of said agency, service or employment in performing the acts and omitting to act as averred herein. Each of the Defendants named herein are believed to, and are alleged to have been acting in concert with, as employee, agent, co-conspirator or member of a joint venture of, each of the other Defendants, and are therefore alleged to be jointly and severally liable for the claims set forth herein, except as otherwise alleged.

JURISDICTION AND VENUE

16. Jurisdiction in this matter is based on 28 U.S.C. § 1332 as there is complete diversity between the parties in that Plaintiffs and Defendants are

1 citizens of different states and the amount in controversy exceeds the sum of
2 \$75,000.

3 17. This Court has personal jurisdiction over Defendants because
4 Defendants conduct business in the State of California, a substantial portion of the
5 wrongdoing alleged by Plaintiffs occurred in the State of California and this
6 District, Defendants have sufficient minimum contacts with and/or otherwise has
7 purposefully availed themselves of the markets of the State of California and this
8 District such that it is fair and just for Defendants to adjudicate this dispute in this
9 District.

10 18. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
11 a substantial part of the events and omissions giving rise to the claims occurred in
12 this District and, as a corporation subject to personal jurisdiction in this District,
13 Defendants conduct business in this District.

14 **FACTUAL ALLEGATIONS**

15 19. Foreclosure proceedings in California are regulated by the
16 Homeowner Bill of Rights (“HBOR”). The HBOR became law on January 1,
17 2013 with the goal of ensuring fair lending and borrowing practices for California
18 homeowners. Codified in the California Civil Code, the “laws are designed to
19 guarantee basic fairness and transparency for homeowners in the foreclosure
20 process.” <https://oag.ca.gov/hbor>.

21 20. One protection the HBOR provides is that an entity is prohibited from
22 recording or causing notices of default to be recorded unless “it is the holder of the
23 beneficial interest under the mortgage or deed of trust, the original trustee or the
24 substituted trustee under the deed of trust, or the designated agent of the holder of
25 the beneficial interest.” Cal. Civ. Code 2924(a)(6). The Section further provides
26 that “[n]o agent of the holder of the beneficial interest under the mortgage or deed
27 of trust, original trustee or substituted trustee under the deed of trust may record a
28 notice of default or otherwise commence the foreclosure process except when

1 acting within the scope of authority designated by the holder of the beneficial
2 interest.”

3 21. The HBOR also requires that, prior to recording or filing documents
4 in connection with a nonjudicial foreclosure, involved parties must take care to
5 review evidence that there is a valid default and a legal right to foreclose.
6 Specifically, California Civil Code Section 2924.17 provides, in relevant portion:

7 (a) [A] notice of default, notice of sale, assignment of a deed of trust, or
8 substitution of trustee recorded by or on behalf of a mortgage servicer in
9 connection with a foreclosure subject to the requirements of Section 2924, or a
10 declaration or affidavit filed in any court relative to a foreclosure proceeding shall
11 be accurate and complete and supported by competent and reliable evidence.

12 (b) Before recording or filing any of the documents described in
13 subdivision(a), a mortgage servicer shall ensure that it has reviewed competent and
14 reliable evidence to substantiate the borrower's default and the right to foreclose,
15 including the borrower's loan status and loan information.

16 Cal. Civ. Code § 2924.17.

17 22. Simply put, a mortgage servicer must review competent and reliable
18 evidence to ensure that the requirements of Section 2924(a)(6) are met before it
19 records a notice of default and other related documents. It must have established,
20 based upon its investigation that the party purporting to hold the beneficial interest
21 actually has that beneficial interest and that the trustee recording notices is acting
22 within the scope permitted through the beneficiary’s authority.

23 23. To record a NOD as a predicate to instituting a non-judicial
24 foreclosure in California, the foreclosing party (usually a bank or similar entity)
25 must, at the time it records the NOD and initiates such foreclosure proceedings,
26 validly hold the mortgage note and the beneficial interest under the deed of trust. If
27 the entity does not hold such ownership interest, any recording of the NOD is
28 invalid. In this case, Defendant Caliber (“Caliber”), presumably at the request and

1 direction of Defendant U.S. Bank (“US Bank”) (themselves acting on behalf of
2 Defendant LSF9 Master Participation Trust (“LSF9”)), recorded a NOD on Gigi’s
3 and other Class members’ homes as the first step towards carrying out a non-
4 judicial foreclosure. As will be discussed herein, Caliber did this even though the
5 LSF9 Trust did not have the legal standing or authority to do so, given the LSF9
6 Trust did not own Plaintiff Gigi or other Class members’ loans at the time
7 Defendant Caliber recorded the NOD.

8 24. Defendant LSF9 held itself out as the owner of the underlying
9 Promissory Note and the holder of the beneficial interest under the deed of trust.
10 Ostensibly, it held the interest by virtue of assignments of the original Promissory
11 Note and Deed of Trust from the original lenders. In truth, LSF9 was not the
12 owner of or in possession of the original Promissory Note or a holder of the
13 beneficial interest under Plaintiffs’ or other Class members’ deed of trust because
14 the Promissory Note and Deed of Trust, and accordingly the beneficial interest
15 under such instruments was never properly and legally transferred from the
16 original lender to LSF9.

17 25. Moreover, Defendant Caliber, as servicer of the loan and acting as the
18 agent for and at the behest of Defendants US Bank and LSF9, had an affirmative
19 duty and obligation under the law to independently review competent and reliable
20 evidence (including at a minimum the Note and Deed of Trust Assignment and
21 Endorsement Chain, as well as the mortgage loan file received from prior loan
22 servicers) to ensure that the LSF9 Trust was, in fact, the valid legal owner and thus
23 entitled to direct them to actually record the NOD. Such review, which US Bank
24 and LSF9 should have insisted upon, would have revealed that there were
25 significant gaps and discrepancies in the respective Note and Deed of Trust
26 Assignment and Note Endorsement chains of title, and, as a result, that real
27 questions existed as to whether or not the LSF9 Trust was, in fact, the valid owner
28

1 of the underlying Promissory Note and the holder of the beneficial interests at the
2 time the NOD was recorded.

3 26. Based on information and belief, Caliber possessed information that
4 (1) the prior servicer, Ocwen, had itself determined that there were serious gaps in
5 the chain of title placing legal ownership of the loan in dispute; (2) that Ocwen had
6 “recreated” documents after-the-fact in the form of so-called “corrective
7 assignments” in an attempt to legitimize and sanitize an otherwise invalid and
8 toxic chain of title on the loan; and (3) that Ocwen, just before transferring
9 servicing to Caliber, in recognition that their unusual and suspect activities was
10 only serving to highlight that the chain of title was incomplete and thus the true
11 ownership of the loan in question, rescinded and withdrew the Notice of Default
12 they had recorded.

13 27. Plaintiffs, as was their statutory right, also requested that Defendant
14 Caliber provide them with documents substantiating the legal ownership by LSF9
15 of the Note and Deed of Trust, including the Note and Deed of Trust Assignment
16 and Endorsement Chain on the loan – a request that Caliber only partially
17 complied with and not within the time limits imposed by law, in violation of the
18 provisions of the Real Estate Settlement Practices Act (RESPA) 12 U.S.C. §2605.
19 Eventually Caliber conceded this failure in writing. Caliber also admitted, in
20 writing, that it too had found gaps in the documented chain of title, but remarkably
21 advised that it intended to “recreate” endorsement chains and “corrective”
22 assignments in order to fill in the acknowledged gaps. With full knowledge of
23 these legal deficiencies and the absence of competent and reliable evidence of the
24 legal authority of LSF9 or their representative Defendant US Bank to do so,
25 Caliber still proceeded to record a NOD on Gigi’s home. Caliber’s knowing and
26 intentional actions go far beyond simple negligence. Caliber has abrogated and
27 rejected its affirmative obligations under law. In failing to fulfill and discharge
28 their statutory obligations, Defendants violated the HBOR and subjected Gigi to

1 the wrongful filing of a NOD on her home and thus the wrongful initiation of a
2 non-judicial foreclosure.

3 28. Further, as the mortgage loan was not owned by LSF9, Defendants
4 Caliber, US Bank and LSF9 lacked the legal authority to collect on the alleged
5 debt. Nevertheless, they continued to send mortgage statements to Plaintiffs and
6 other Class members in an attempt to collect on a debt not owed to LSF9. Caliber
7 also sought to collect on a debt they could not validate, nor could they ascertain
8 how much was supposedly owed under said debt, as they conceded in writing that
9 they lacked a full and complete payment history on the loan (documentation
10 needed for Caliber, US Bank, and LSF9 to validate the amount of the alleged
11 debt). Rather, Caliber relied on what they had received from the prior servicer,
12 Ocwen, albeit incomplete. Caliber then, despite acknowledging that there were
13 unexplained financial discrepancies in the debt validation statements, mortgage
14 statements and other demands for payment they had sent to Plaintiffs and other
15 Class members on behalf of Defendants US Bank and LSF9, nevertheless
16 attempted to collect the debt as if it had the authority to do so and as if the amount
17 was validated and undisputed. These actions violated California's Rosenthal Fair
18 Debt Collection Practices Act ("Rosenthal Act") and provisions of the federal Fair
19 Debt Collection Practices Act ("FDCPA").

20 29. Further, under the provisions of RESPA, 12 U.S.C. § 2605, both
21 Caliber and Ocwen had affirmative duties to timely respond to any Qualified
22 Written Requests for information received from Plaintiffs. Caliber and Ocwen
23 repeatedly failed to do this, in direct violation of their duties under RESPA.

24 30. Defendants also failed to honor their obligations under the Federal
25 Truth in Lending Act (TILA) 15 U.S.C. § 1641(g) (specifically Section 131g, as
26 implemented by Regulation Z, 12 CFR §1026.39) by failing to disclose to
27 Plaintiffs each sale or transfer of their mortgage loan.

1 31. Additionally, in ignoring their legal duties under the HBOR, the
2 Rosenthal Act and the FDCPA, RESPA, and TILA, Defendants engaged in
3 unlawful acts in violation of the Unfair Competition Law (“UCL”), California
4 Business and Professions Code Section 17200 *et seq.*

5 32. The notices of default issued in connection with Plaintiffs and other
6 Class members’ nonjudicial foreclosures were recorded as part of the public record
7 by or on behalf of Defendant Caliber, the loan servicer.

8 33. In violation of Section 2924.17(a), the notices of default recorded in
9 connection with Plaintiffs and other Class members’ nonjudicial foreclosures were
10 not accurate, complete or supported by competent and reliable evidence.

11 34. In violation of Section 2924.17(b), Caliber failed to ensure that it had
12 first reviewed competent and reliable evidence, including Plaintiffs and other
13 Class members’ loan information—who the true beneficial interest holders of the
14 Promissory Notes and Deed of Trusts were, as well as the legitimacy of pre-
15 requisite and necessary substitution of trustee documents—to substantiate its right
16 to foreclose on behalf of Defendant US Bank (on behalf of LSF9).

17 35. On Plaintiffs’ information and belief, based on servicing industry
18 standards, at the time that Caliber took over the servicing of the loan, Caliber was
19 provided by Ocwen with its entire loan file which should have included, but would
20 not be limited to, the original Note (with a full set of endorsements to the current
21 purported investor), the Deed of Trust (along with all assignments from the date of
22 loan origination to the current time), a full and complete payment history on the
23 loan from its inception, and full correspondence files between the Plaintiffs and
24 Ocwen regarding the loan.

25 36. On February 9, 2017, unbeknownst to Plaintiffs, a Notice of Default
26 and Election to Sell Under Deed of Trust, with a supporting Declaration of
27 Compliance was recorded by Caliber. Included in the NOD was a statement by
28 the Trustee’s representative attesting that the loan servicer of Plaintiffs loan,

1 Caliber, had fulfilled its obligations under California Civil Code § 2923.55, (the
2 fulfillment of which is a necessary predicate to being able to legally record a NOD
3 in California) by executing a Declaration of Compliance to the Notice of Default,
4 which Declaration was attached and recorded. A review of the Declaration of
5 Compliance reveals however that it was not executed by Caliber, the present loan
6 servicer, on behalf of the present purported owner of the loan, LSF9. Rather, the
7 Declaration was executed back in August 2015 by Ocwen, a predecessor servicer,
8 on behalf of the ARLP trust. Further, this Declaration of Compliance was
9 regarding a former NOD recorded by Ocwen and subsequently rescinded. As such
10 both the Trustees attestation as well as the Declaration of Compliance attached to
11 the NOD were invalid, as they failed to comply with the provisions of California
12 Civil Code § 2923.55, and California Civil Code § 2924.17(a), rendering the NOD
13 void. The Notice of Default was not mailed until February 27, 2017.

14 37. Pursuant to Paragraph 22 of the Deed of Trust, any foreclosure related
15 activity including the recording of a NOD can only be taken after the borrower has
16 been sent a Notice of Intent to Accelerate and the period of time for the borrower
17 to cure has expired. Accordingly, the filing by Caliber of the NOD on the property
18 on February 9, 2017, prior to receipt of any Notice of Intent to Accelerate, was
19 premature and invalid under the terms of the Deed of Trust.

20 38. On March 1, 2017, Caliber sent Plaintiffs a Notice of Default and
21 Intent to Accelerate the loan. Pursuant to Paragraph 22 of the Deed of Trust, this
22 Notice must be sent to a borrower and the period of time to cure the breach must
23 pass before any act related to non-judicial foreclosure can be initiated, including
24 the recording of a Notice of Default. Thus, the recording of the NOD in February
25 9, 2017 was invalid and violated the terms of the Deed of Trust.

26 39. Ironically, the Notice of Default and Intent to Accelerate also advised
27 Plaintiffs that they had the right to receive from Caliber copies of any assignments
28 of the borrower's mortgage or deed of trust as well as a copy of the borrower's

1 payment history since the time when the borrower was less than sixty (60) days
 2 past due -- the very same documents that Plaintiffs had been requesting of Caliber
 3 for over six (6) months and which Caliber had still never provided.

4 40. On March 3, 2017, Caliber sent Plaintiffs' representative a letter in
 5 response to his of February 10, 2017. The response ignored the new issues raised
 6 in Plaintiffs' February 10, 2017 QWR, and incorrectly advised Plaintiffs that
 7 Caliber had "addressed all of your concerns in our previous correspondence, dated
 8 November 10, 2016 and November 16, 2016". As of this point in time, Caliber
 9 had still not provided Plaintiffs with copies of all assignments representing a full
 10 assignment chain, the results of Caliber's complete title examination or a full and
 11 complete copy of the payment history of the loan ad a detailed breakdown of the
 12 amounts claimed to be due under the loan. Once again, the statutory time period in
 13 which Caliber was obligated to respond pursuant to RESPA has expired.

14 **CLASS ALLEGATIONS**

15 41. Plaintiffs bring this action on behalf of themselves and as a class
 16 action pursuant to the provisions of Rules 23(a) and 23(b)(3) of the Federal Rules
 17 of Civil Procedure. Plaintiffs seek to represent a class initially defined as:

18 All California residents whose property was subject to nonjudicial
 19 foreclosure proceedings initiated by Caliber on behalf of US Bank
 and/or LSF9.

20 42. Plaintiffs also seek to represent a class initially defined as:

21 All California residents who are the borrowers/trustors under Deed of
 22 Trusts of which the beneficial interest was purportedly held by US
 23 Bank as Trustee for LSF9.

24 43. Plaintiffs further seek to represent a class initially defined as:

25 All California residents who are the borrowers/trustors of Promissory
 26 Notes owned by Resi, Alfisource, Wilmington Trust, ARLP, and/or
 Invesco and serviced by Ocwen.

27 (All classes collectively, the "Class".)
 28

1 44. The “Class Period” starts on January 1, 2013, or the earliest time
2 permitted by the claims asserted herein, and continues through the present and the
3 date of judgment. Specifically excluded from the Class are: (a) any officers,
4 directors, or employees of Defendants; (b) any judge assigned to hear this case (or
5 spouse or immediate family member of any assigned judge); (c) any employee of
6 the Court; (d) any juror selected to hear this case; and (e) any attorneys of record
7 and their employees.

8 45. Plaintiffs reserve the right to modify, expand, or amend the above
9 Class definition or seek certification of a class that is defined differently than
10 above before any court determines whether certification is appropriate following
11 discovery.

12 46. *Numerosity.* Members of the Class are so numerous that joinder of all
13 members is impracticable. While the number of Class members is unknown to
14 Plaintiffs at this time, Plaintiffs are informed and believe that the Class numbers at
15 least in the thousands.

16 47. *Ascertainability.* The community of interest among the Class
17 members in the litigation is well defined and the proposed Class is ascertainable
18 from objective criteria. The identities of Class members can be obtained from
19 Defendants’ business records. Class members can be notified of the pendency of
20 Plaintiffs’ Complaint by mail or published notice. If necessary to preserve the
21 case as a class action, the Court can redefine the Class and/or create subclasses.

22 48. *Commonality and Predominance.* There is a well-defined community
23 of interest in the questions of law and fact affecting the parties to be represented in
24 this action. Common questions of law and fact that exist as to all members of the
25 Class and predominate over any questions affecting only individual members,
26 include, but are not limited to:

- 27 (a) Whether Defendants violated the California Homeowner Bill of
28 Rights, California Civil Code Section 2924.6 by recording or causing

1 to be recorded a notice of default when it was not the legal holder of
2 the beneficial interest;

3 (b) Whether Defendants violated the California Homeowner Bill of
4 Rights, California Civil Code Section 2924.17(b) by failing to review
5 competent and reliable evidence to substantiate the borrower's default
6 and the right to foreclose;

7 (c) Whether Defendants violated the Rosenthal Act;

8 (d) Whether Defendants violated RESPA;

9 (e) Whether Defendants violated TILA;

10 (f) Whether Plaintiffs and Class members are entitled to damages and/or
11 restitution and the proper measure of that loss;

12 (g) Whether Plaintiffs and Class members are entitled to an injunction;

13 (h) The appropriate Class-wide measure of damages.

14 49. *Typicality.* Each Plaintiff is a member of the Class and each's claims
15 are typical of the claims of members of the Class. Typical of members of the
16 Class, Plaintiffs' home were subject to a Notice of Default by Defendants during
17 the Class Period. Plaintiff and Class members each sustained, and will continue to
18 sustain, damages arising from Defendants' wrongful conduct, as alleged more
19 fully herein. Plaintiffs' claims are founded on the same legal theories as those of
20 the Class.

21 50. *Adequacy of Representation.* Each Plaintiff is an adequate
22 representative of the Class because his and her interests do not conflict with the
23 interests of the other Class members and because Plaintiffs have retained counsel
24 competent and experienced in complex class action and consumer litigation,
25 including substantial experience in the types of claims alleged in this Complaint.
26 Plaintiffs and their counsel will fairly and adequately protect the interests of the
27 Class.
28

1 51. *Declaratory and Injunctive Relief.* Defendants have acted or refused
2 to act on grounds generally applicable to Plaintiffs and other members of the
3 Class, thereby making appropriate final injunctive relief and declaratory relief, as
4 described below, with respect to the members of the Class.

5 52. *Superiority of Class Adjudication.* The certification of a class in this
6 action is superior to the litigation of a multitude of cases by members of the Class.
7 Class adjudication will conserve judicial resources and will avoid the possibility of
8 inconsistent rulings. Moreover, there are Class members who are unlikely to join
9 or bring an action due to, among other reasons, their reluctance to sue Defendants
10 and/or their inability to afford a separate action. Equity dictates that all persons
11 who stand to benefit from the relief sought herein should be subject to the lawsuit
12 and hence subject to an order spreading the costs of the litigation among the Class
13 members in relation to the benefits received. The damages, restitution, and other
14 potential recovery for each individual member of the Class are modest, relative to
15 the substantial burden and expense of individual prosecution of these claims.
16 Given the amount of the individual Class members' claims, few, if any, Class
17 members could afford to seek legal redress individually for the wrongs complained
18 of herein. Individualized litigation presents a potential for inconsistent or
19 contradictory judgments. Individualized litigation increases the delay and expense
20 to all parties and the court system presented by the complex legal and factual
21 issues of the case. By contrast, the class action device presents far fewer
22 management difficulties, and provides the benefits of single adjudication,
23 economy of scale, and comprehensive supervision by a single court.

24 53. In the alternative, the above-referenced Class may be certified
25 because:

- 26 a. The prosecution of separate actions by the individual members of
27 the Class would create a risk of inconsistent or varying
28 adjudication with respect to individual Class members' claims

1 which would establish incompatible standards of conduct for
2 Defendants;

- 3 b. The prosecution of separate actions by individual members of the
4 Class would create a risk of adjudications which would as a
5 practical matter be dispositive of the interests of other members
6 of the class who are not parties to the adjudications, or which
7 would substantially impair or impede the ability of other Class
8 members to protect their interests; and,
9 c. Defendants have acted or refused to act on grounds generally
10 applicable to the Class, thereby making appropriate final and
11 injunctive relief with respect to the Class.

12 **FIRST CLAIM FOR RELIEF**

13 **(Violation of the California Homeowner Bill of Rights,**

14 **Cal. Civ. Code § 2920 et seq.)**

15 (By Plaintiffs Against Defendants Caliber, US Bank and LSF9)

16 54. Plaintiffs incorporate all preceding and succeeding allegations by
17 reference as if fully set forth herein.

18 55. Plaintiffs bring this claim individually and on behalf of the Class
19 pursuant to the California Homeowner Bill of Rights, California Civil Code
20 Section 2920.5 *et seq.* (the “HBOR”).

21 56. Plaintiffs and all other Class members are “borrowers” as that term is
22 defined by the HBOR.

23 57. Section 2924(a)(6) of the California Civil Code provides that no
24 entity shall record or cause a notice of default to be recorded unless “it is the
25 holder of the beneficial interest under the mortgage or deed of trust, the original
26 trustee or the substituted trustee under the deed of trust, or the designated agent of
27 the holder of the beneficial interest.” The Section further provides that “No agent
28 of the holder of the beneficial interest under the mortgage or deed of trust, original

1 trustee or substituted trustee under the deed of trust may record a notice of default
2 or otherwise commence the foreclosure process except when acting within the
3 scope of authority designated by the holder of the beneficial interest.”

4 58. Section 2924.17(a) of the California Civil Code mandates “A
5 declaration recorded pursuant to Section 2923.5 or, until January 1, 2018, pursuant
6 to Section 2923.55, a notice of default, notice of sale, assignment of a deed of
7 trust, or substitution of trustee recorded by or on behalf of a mortgage servicer in
8 connection with a foreclosure subject to the requirements of Section 2924, or a
9 declaration or affidavit filed in any court relative to a foreclosure proceeding shall
10 be accurate and complete and supported by competent and reliable evidence.”

11 59. Section 2924.17(b) of the California Civil Code provides that “Before
12 recording or filing any of the documents described in subdivision (a), a mortgage
13 servicer shall ensure that it has reviewed competent and reliable evidence to
14 substantiate the borrower's default and the right to foreclose, including the
15 borrower's loan status and loan information.”

16 60. Section 2923.55 of the California Civil Code provides in pertinent
17 part that a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent
18 may **not** record a notice of default pursuant to Section 2924 until thirty (30) days
19 after contact is made with the borrower to assess the borrower’s financial
20 condition and explore options for the borrower to avoid foreclosure or thirty (30)
21 days after satisfying the due diligence requirement with regard to contacting or
22 attempting to contact the borrower. In addition, before recording a notice of
23 default, the mortgage servicer must also notify the borrower that they may request
24 a copy of the promissory note, the deed of trust, all assignments of the deed of
25 trust and a copy of the payment history on the loan.

26 61. As alleged in detail above, Defendants’ actions are contrary to the
27 provisions and requirements of the HBOR. In addition to their own admissions
28 regarding the absence of competent and reliable evidence, a simple review of the

1 assignment chain, the endorsement chain, the payment history, the prior recorded
2 and rescinded notices of default, the loan file received from the predecessor
3 servicer (Ocwen), correspondence received from Plaintiffs and other Class
4 members, and even a basic comparison of signatures on said documents would
5 have revealed significant gaps in the assignment chain and the endorsement chain
6 as well as signature irregularities on necessary title documents such that
7 Defendants lacked competent and reliable evidence demonstrating that they had
8 the right, power or authority to record notices of default or otherwise commence
9 foreclosure proceedings on Plaintiffs' and other Class members' property.

10 62. Defendants, prior to taking the foreclosure related actions herein
11 alleged, did not ensure, as required by statute, that they had reviewed competent
12 and reliable evidence substantiating their legal authority to record, either
13 themselves or as the beneficiary's agent, the Notice of Default. Indeed, at the time
14 the NOD was recorded, in addition to the foregoing failures, Defendants also knew
15 or from a review of competent and reliable evidence should have known, that the
16 NOD was recorded despite the failure to first provide Plaintiffs and other Class
17 members with the required Notice of Default and Intent to Accelerate and the
18 requisite time to cure the alleged default as required by the applicable DOTs.

19 63. In addition, a review of the Declaration of Compliance attached to
20 Plaintiffs' NOD reveals that it was neither accurate nor complete. First, it was not
21 executed by Caliber, the then loan servicer, on behalf of the then purported owner
22 of the loan, LSF9. Instead, the declaration was executed back in August 2015 by
23 Ocwen, the predecessor servicer to Caliber, and was executed not on behalf of
24 LSF9, but on behalf of another entity altogether, the ARLP trust. Second, this
25 declaration was executed in connection with and as support for a wholly separate
26 and prior NOD that was recorded by and subsequently rescinded by Ocwen. The
27 recording of the present NOD by Caliber was required to be accurate and
28 complete, and supported by competent and reliable evidence. Caliber also had to

1 comply with the provisions contained within Civil Code section 2923.55. They did
2 neither. On information and belief, the Declarations of Compliance attached to
3 the NOD's of other Class members are likewise inaccurate and/or incomplete.

4 64. Caliber and LSF9 cannot support the current NOD with an almost
5 two (2) year old declaration executed by a different servicing entity on behalf of a
6 different purported owner. Nor can Caliber and LSF9 support the current NOD
7 with an almost two (2) year old declaration that supported a now rescinded NOD.
8 There is no basis for the Trustee's attestation or any possible way that the loan
9 servicer, Caliber, fulfilled its obligations under Civil Code § 2923.55, and Civil
10 Code Section 2924.17. For these reasons, the recording of the NOD by Caliber on
11 behalf of LSF9 was on its face void and invalid. Despite these serial and material
12 HBOR violations, and despite the lack of competent and reliable evidence,
13 Defendants nevertheless proceeded to record the NOD. On information and belief,
14 these activities were conducted on a Class-wide basis.

15 65. Although required to do so prior to recording a notice of default,
16 Caliber failed to provide Plaintiffs and other Class members with notice of their
17 right to request a copy of the promissory note, the deed of trust, all assignments of
18 the deed of trust and a copy of the payment history on the loan. Nor did Caliber
19 attempt to contact the Plaintiffs or other Class members to assess their financial
20 condition as required to be attested to in the Declarations in support of the NODs.

21 66. Defendants' actions as alleged herein constitute material violations of
22 the HBOR and were carried out by Defendants intentionally, recklessly or were
23 the result of willful misconduct by Defendants. Defendants admitted that there
24 were gaps in the chain of title and were aware that there was a myriad of other
25 problems, which made were at odds with the requirement that they have competent
26 and reliable evidence. Additionally, had Defendants reviewed competent and
27 reliable evidence before recording the NOD, they would have seen the errors and
28 irregularities in the documents and ownership and would have recognized they did

1 not have the legal right or standing to take the actions they took. They would have
2 also realized that they had not complied with the provisions of Civil Code section
3 2923.55 and accordingly lacked the ability to record the NOD.

4 67. Plaintiffs have suffered actual economic damages as a direct and
5 proximate result of Defendants' misconduct. Accordingly, Plaintiffs are entitled to
6 all relief provided by the HBOR, including attorneys' fees. *See* Cal. Civ. Code §
7 2924.12(I). In addition, Plaintiffs are entitled to injunctive relief pursuant to
8 Section 2924.12(a)(2), with said injunction remaining in place until such time as
9 the Defendants have corrected and remedied the various violations of the HBOR
10 as set forth herein.

11 68. Defendants' actions as alleged herein constitute material violations of
12 the HBOR and were carried out by Defendants intentionally, recklessly or were
13 the result of willful misconduct by Defendants. Defendants admitted that there
14 were gaps in the chain of title and were aware that there was a myriad of other
15 problems, which made were at odds with the requirement that they have competent
16 and reliable evidence. Additionally, had Defendants reviewed competent and
17 reliable evidence before recording the NODs, they would have seen the errors and
18 irregularities in the documents and ownership and would have recognized they did
19 not have the legal right or standing to take the actions they took. They would have
20 also realized that they had not complied with the provisions of Civil Code section
21 2923.55 and accordingly lacked the ability to record the NODs.

22 69. Plaintiffs and all Class members have suffered actual economic
23 damages as a direct and proximate result of Defendants' misconduct.
24 Accordingly, Plaintiffs and Class members are entitled to all relief provided by the
25 HBOR, including attorneys' fees. *See* Cal. Civ. Code § 2924.12(I). In addition,
26 Plaintiffs and Class members are entitled to injunctive relief pursuant to Section
27 2924.12(a)(2), with said injunction remaining in place until such time as the
28

1 defendants have corrected and remedied the various violations of the HBOR as set
2 forth herein.

3 **SECOND CLAIM FOR RELIEF**

4 **(Violation of Rosenthal Fair Debt Collection Practices Act)**

5 (By Plaintiffs Against Defendants Caliber, US Bank, and LSF9)

6 70. Plaintiffs incorporate all preceding and succeeding allegations by
7 reference as if fully set forth herein.

8 71. Plaintiffs bring this claim individually and on behalf of the Class
9 against Defendants Caliber, US Bank, and LSF9 only.

10 72. California's Rosenthal Fair Debt Collection Practices Act ("Rosenthal
11 Act") prohibits creditors and debt collectors from, among other things, making
12 false, deceptive, or misleading representations in an effort to collect a debt. Cal.
13 Civ. Code Section 1788 *et seq.*

14 73. Plaintiffs and all Class members are "debtor[s]" as that term is
15 defined by California Civil Code Section 1788.2(h). Under the Rosenthal Act, a
16 "debt collector" is defined as "any person who, in the ordinary course of business,
17 regularly, on behalf of himself or herself or others, engages in debt collection." *Id.*
18 at § 1788.2(c). Defendants are "debt collectors" as that term is defined in
19 California Civil Code Section 1788.2(c) because they regularly sent or directed to
20 be sent mortgage bills, communications and other notices seeking to collect money
21 from Plaintiffs and Class members and acted as the servicer(s) of Plaintiffs' and
22 Class members' mortgage loans.

23 74. California Civil Code Section 1788.17 provides that "every debt
24 collector collecting or attempting to collect a consumer debt shall comply with the
25 provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the
26 remedies in Section 1692k of, Title 15 of the United States Code." Cal. Civ. Code
27 § 1788.17. Thus, the Rosenthal Act incorporates the provisions of the federal Fair
28 Debt Collection Practices Act (hereinafter "FDCPA") and a plaintiff may state a

1 claim for violation of the Rosenthal Act by showing that a defendant violated any
2 of several provisions of the FDCPA.

3 75. Section 1692e of the FDCPA provides that a debt collector may not
4 use any “false, deceptive, or misleading representation or means in connection
5 with the collection of any debt including: (2) The false representation of (A) the
6 character, amount or legal status of any debt....” 15 U.S.C. § 1692e(2)(A).
7 Section 1692e(10) further provides that “[t]he use of any false representation or
8 deceptive means to collect or attempt to collect any debt...” is conduct in violation
9 of that Section. *Id.* at § 1692e(10).

10 76. On information and belief, and as alleged herein, Defendants knew or
11 had reason to know that documents and information, including but not limited to
12 the assignments of the deed of trust and endorsements of the Promissory Note,
13 were not valid to establish their legal right to collect payments from Plaintiffs.

14 77. Defendants, by their own admission, knew: a) that there were
15 discrepancies between the amounts stated as due in their debt validation letters and
16 the monthly mortgage statements sent to Plaintiffs; and b) that there were
17 discrepancies in the amounts they were seeking to collect based on alleged fees
18 and costs that had been waived according to their own payment history.
19 Consequently, Caliber knew that it clearly lacked the ability to accurately know
20 and thus validate the nature and true amount of the alleged debt owed by Plaintiffs.

21 78. On information and belief, Defendants knew a) that there were
22 discrepancies between the amounts stated as due in their debt validation letters and
23 the monthly mortgage statements sent to Class members; and b) that there were
24 discrepancies in the amounts they were seeking to collect based on alleged fees
25 and costs that had been waived according to their own payment history.
26 Consequently, Caliber knew that it clearly lacked the ability to accurately know
27 and thus validate the nature and true amount of the alleged debt owed by Class
28 members.

1 79. Without the ability to establish their legal right to collect payments, or
2 to validate the nature and true amount of the debt allegedly owed by Plaintiffs and
3 Class members, Defendants have engaged in debt collection activities in violation
4 of the Rosenthal Act, California Civil Code Section 1788.10 *et seq.*, and by
5 implication, the FDCPA, by, among other things: (a) misstating the character,
6 amount or legal status of the debt they collected or sought to collect from Plaintiffs
7 and Class members; (b) threatening to take or taking action (filing notices of
8 default to initiate non-judicial foreclosure) that cannot be legally taken given their
9 inability to establish their authority to do so; and (c) using false representations or
10 deceptive means (representing they had standing to take the actions they were
11 taking when the rights they seek to enforce were not assigned to them) to collect or
12 attempt to collect the debt from Plaintiffs and all other Class members.

13 80. As alleged herein Defendants also falsely represented the character
14 and amount of debts to the Plaintiffs and Class members and used false
15 representations or deceptive means to collect or attempt to collect those debts in
16 that they could not demonstrate that they had the legal right to collect any debt on
17 behalf of the purported owner of the underlying Note or Deed of Trust on
18 Plaintiffs' and other Class members' homes, nor could they validate and confirm
19 the accuracy of the debt amounts allegedly owed.

20 81. Plaintiffs and all other Class members reasonably relied at the time on
21 Defendants' representations of the character, amount, and validity of the debt
22 allegedly owed and the Defendants' authority to act in the capacity of debt
23 collectors on behalf of the legal owner of the Promissory Note.

24 82. Defendants' acts as described above were done willfully and
25 knowingly within the meaning of California Civil Code Section 1788.30(b). As
26 alleged herein, Defendants knew they did not have the documentation necessary
27 and required to establish their right to collect payments from Plaintiffs and all
28 other Class members, to initiate foreclosure on Plaintiffs' and other Class

1 members' properties, or to validate the nature and amount of the debt allegedly
2 owed, yet they continued to do so as though they did.

3 83. The payments demanded by Defendants on the mortgage purportedly
4 owed by Plaintiffs and Class members are "debt[s]" within the meaning of
5 California Civil Code Section 1788.2(d), because they are "money, property or
6 their equivalent which [are] due or owing or alleged to be due or owing from a
7 natural person to another person."

8 84. As a result of Defendants' actions herein, Plaintiffs and all other
9 Class members have been damaged and Plaintiffs, on behalf of all Class members,
10 seek all available relief under the California Rosenthal Fair Debt Collection
11 Practices Act. Pursuant to California Civil Code Section 1788.17, Plaintiffs and
12 all other Class members are entitled to recover actual damages sustained because
13 of Defendants' violations of the Rosenthal Act, which incorporates the FDCPA.
14 Such damages include, without limitation, monetary losses and damages.
15 Additionally, because Defendants' violations of the Rosenthal Act were committed
16 willingly and knowingly, Plaintiffs and all other Class members are entitled to
17 recover statutory damages in the amount of \$1,000 for each violation. *See* Cal.
18 Civ. Code § 1788.17 and 15 U.S.C. 1692k(a)-(c).

19 85. Pursuant to California Civil Code Section 1788.17 and Section 1629k
20 of Title 15 of the United States Code, Plaintiffs, on behalf of the Class, are entitled
21 to recover all attorneys' fees, costs, and expenses incurred in the bringing of this
22 action.

23 **THIRD CLAIM FOR RELIEF**

24 **(Violation of Rosenthal Fair Debt Collection Practices Act)**

25 (By Plaintiffs Against Defendants Ocwen, Invesco, Wilmington Trust, and ARLP)

26 86. Plaintiffs incorporate all preceding and succeeding allegations by
27 reference as if fully set forth herein.
28

1 87. Plaintiffs bring this claim individually and on behalf of the Class
2 against Defendants Ocwen, Invesco, Wilmington Trust, and ARLP only.

3 88. California's Rosenthal Fair Debt Collection Practices Act ("Rosenthal
4 Act") prohibits creditors and debt collectors from, among other things, making
5 false, deceptive, or misleading representations in an effort to collect a debt. Cal.
6 Civ. Code Section 1788 *et seq.*

7 89. Plaintiffs and all Class members are "debtor[s]" as that term is
8 defined by California Civil Code Section 1788.2(h). Under the Rosenthal Act, a
9 "debt collector" is defined as "any person who, in the ordinary course of business,
10 regularly, on behalf of himself or herself or others, engages in debt collection." *Id.*
11 at § 1788.2(c). Defendants are "debt collectors" as that term is defined in
12 California Civil Code Section 1788.2(c) because they regularly sent or directed to
13 be sent mortgage bills, communications and other notices seeking to collect money
14 from Plaintiffs and Class members and acted as the servicer(s) of Plaintiffs' and
15 Class members' mortgage loans.

16 90. California Civil Code Section 1788.17 provides that "every debt
17 collector collecting or attempting to collect a consumer debt shall comply with the
18 provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the
19 remedies in Section 1692k of, Title 15 of the United States Code." Cal. Civ. Code
20 § 1788.17. Thus, the Rosenthal Act incorporates the provisions of the federal Fair
21 Debt Collection Practices Act (hereinafter "FDCPA") and a plaintiff may state a
22 claim for violation of the Rosenthal Act by showing that a defendant violated any
23 of several provisions of the FDCPA.

24 91. Section 1692e of the FDCPA provides that a debt collector may not
25 use any "false, deceptive, or misleading representation or means in connection
26 with the collection of any debt including: (2) The false representation of (A) the
27 character, amount or legal status of any debt...." 15 U.S.C. § 1692e(2)(A).
28 Section 1692e(10) further provides that "[t]he use of any false representation or

1 deceptive means to collect or attempt to collect any debt...” is conduct in violation
2 of that Section. *Id.* at § 1692e(10).

3 92. On information and belief, and as alleged herein, Defendants knew or
4 had reason to know that documents and information, including but not limited to
5 the assignments of the deed of trust and endorsements of the Promissory Note,
6 were not valid to establish their legal right to collect payments from Plaintiffs and
7 all other Class members.

8 93. Without the ability to establish their legal right to collect payments, or
9 to validate the nature and true amount of the debt allegedly owed by Plaintiffs and
10 Class members, Defendants have engaged in debt collection activities in violation
11 of the Rosenthal Act, California Civil Code Section 1788.10 *et seq.*, and by
12 implication, the FDCPA, by, among other things: (a) misstating the character,
13 amount or legal status of the debt they collected or sought to collect from Plaintiffs
14 and all other Class members; (b) threatening to take or taking action (filing a
15 notices of default to initiate non judicial foreclosures) that cannot be legally taken
16 given their inability to establish their authority to do so; and (c) using false
17 representations or deceptive means (representing they had standing to take the
18 actions they were taking when the rights they seek to enforce were not assigned to
19 them) to collect or attempt to collect the debt from Plaintiffs and all other Class
20 members.

21 94. As alleged herein, Defendants also falsely represented the character
22 and amount of debts to the Plaintiffs and Class members and used false
23 representations or deceptive means to collect or attempt to collect those debts in
24 that they could not demonstrate that they had the legal right to collect any debt on
25 behalf of the purported owner of the underlying Note or Deed of Trust on Plaintiff
26 and other Class members’ homes. Nor could they validate and confirm the
27 accuracy of the debt amounts allegedly owed.

1 95. Plaintiffs and all other Class members reasonably relied at the time on
2 Defendants' representations of the character, amount, and validity of the debt
3 allegedly owed and the Defendants' authority to service the debt and collect
4 payments on behalf of the legal owner of the Promissory Note.

5 96. Defendants' acts as described above were done willfully and
6 knowingly within the meaning of California Civil Code Section 1788.30(b). As
7 alleged herein, Defendants knew they did not have the documentation necessary
8 and required to establish their right to collect payments from Plaintiffs and other
9 Class members, to initiate foreclosure on Plaintiffs' and all other Class members'
10 properties, or to validate the nature and amount of the debt allegedly owed, yet
11 they continued to do so as though they did.

12 97. The payments demanded by Defendants on the mortgage purportedly
13 owed by Plaintiffs and Class members are "debt[s]" within the meaning of
14 California Civil Code Section 1788.2(d), because they are "money, property or
15 their equivalent which [are] due or owing or alleged to be due or owing from a
16 natural person to another person."

17 98. As a result of Defendants' actions herein, Plaintiffs and all other
18 Class members have been damaged and Plaintiffs, on behalf of all Class members,
19 seek all available relief under the California Rosenthal Fair Debt Collection
20 Practices Act. Pursuant to California Civil Code Section 1788.17, Plaintiffs and
21 all other Class members are entitled to recover actual damages sustained because
22 of Defendants' violations of the Rosenthal Act, which incorporates the FDCPA.
23 Such damages include, without limitation, monetary losses and damages.
24 Additionally, because Defendants' violations of the Rosenthal Act were committed
25 willingly and knowingly, Plaintiffs and all other Class members are entitled to
26 recover statutory damages in the amount of \$1,000 for each violation. *See* Cal.
27 Civ. Code § 1788.17 and 15 U.S.C. 1692k(a)-(c).

1 of up to two thousand dollars (\$2,000) for each violation, as well as attorneys' fees
2 and costs.

3 **FIFTH CLAIM FOR RELIEF**
4 **(Violation of the Real Estate Settlement Practices Act,**
5 **(RESPA) 12 U.S.C. § 2605**

6 (By Plaintiffs Against Caliber)

7 105. Plaintiffs incorporate all preceding and succeeding allegations by
8 reference as if fully set forth herein.

9 106. Plaintiffs bring this claim individually and on behalf of the Class
10 against Defendant Caliber only.

11 107. Caliber is a servicer as defined in 15 U.S.C. § 2605(e)(i)(2).
12 Plaintiffs, as detailed herein, and, on information and belief, Class members, sent
13 numerous written communications to Caliber which were QWR's as defined in 12
14 U.S.C. § 2605(e)(B)(i).

15 108. Pursuant to the requirements of RESPA, Caliber required to
16 acknowledge receipt of each of Plaintiffs and other Class members' QWR's within
17 five (5) days of their receipt and to take action with respect to Plaintiffs and other
18 Class members' inquiries within thirty (30) days of their receipt. Caliber did none
19 of this regarding Plaintiffs. On information and belief, Caliber did none of this
20 regarding all other Class members.

21 109. Plaintiffs and other Class members, as a result of the Defendant's
22 violations of RESPA and their failures to respond as required as set forth herein,
23 suffered actual damages and are entitled to recover their actual damages from
24 Caliber. In addition, due to Defendant's pattern and practice of RESPA violations,
25 Plaintiffs and other Class members are also entitled to recover additional damages
26 of up to two thousand dollars (\$2,000) for each violation, as well as attorneys' fees
27 and costs.
28

SIXTH CLAIM FOR RELIEF

(Violation of the Truth In Lending Act)

(By Plaintiffs Against Invesco and LSF9)

110. Plaintiffs incorporate all preceding and succeeding allegations by reference as if fully set forth herein.

111. Plaintiffs bring this claim individually and on behalf of the Class against Defendants Invesco and LSF9.

112. Invesco and LSF9 are parties subject to the provisions of TILA.

113. The Federal Truth in Lending Act (TILA) 15 U.S.C. § 1641(g) (specifically Section 131g, as implemented by Regulation Z, 12 CFR 1026.39) requires that a borrower be provided notice of each transfer or sale of a borrowers mortgage loan by the new owner of the loan within thirty (30) days of the sale or transfer.

114. Invesco and LSF9 violated TILA by, *inter alia*, failing to disclose to Plaintiffs and Class members each sale or transfer of their mortgage loan.

115. Invesco and LSF9 systematically and pervasively engaged in violations of TILA to the detriment of members of the Class.

116. As a direct result of Invesco and LSF9's illegal conduct, Plaintiff and Class members were injured and damaged in that they were

117. Pursuant to 15 U.S.C. Section 1640(a) of TILA, Plaintiffs and all other Class members are entitled to actual and statutory damages, plus reasonable attorneys' fees and costs of suit, an amounts to be proven at trial.

SEVENTH CLAIM FOR RELIEF

(Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*)

(By Plaintiffs Against Defendants Caliber, US Bank, and LSF9)

118. Plaintiffs incorporate all preceding and succeeding allegations by reference as if fully set forth herein.

1 119. Plaintiffs bring this claim individually and on behalf of the Class
2 pursuant to Section 17200 et seq. of the Business & Professions Code, the Unfair
3 Competition Law (“UCL”) against Defendants Caliber, US Bank, and LSF9.

4 120. California’s UCL prohibits unfair competition, which includes any
5 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
6 untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200 et seq.

7 121. A business act or practice is “unlawful” under the UCL if it violates
8 any other law or regulation.

9 122. Defendants committed, and continue to commit, “unlawful” business
10 acts or practices by, among other things, violating the Homeowner Bill of Rights
11 (“HBOR”), Cal. Civ. Code Section 2920 et seq.; California’s Rosenthal Fair Debt
12 Collection Practices Act (“Rosenthal Act”), Cal. Civ. Code Section 1788 et seq.;
13 the Real Estate Settlement Practices Act (“RESPA”), 12 U.S.C. § 2605, and the
14 Federal Truth in Lending Act (TILA) 15 U.S.C. § 1641(g).

15 123. As described above, Defendants’ conduct is unlawful in that it
16 violated Section 2924.17 of the HBOR. Specifically, Section 2924.17(a) of the
17 California Civil Code mandates “A declaration recorded pursuant to Section
18 2923.5 or, until January 1, 2018, pursuant to Section 2923.55, a notice of default,
19 notice of sale, assignment of a deed of trust, or substitution of trustee recorded by
20 or on behalf of a mortgage servicer in connection with a foreclosure subject to the
21 requirements of Section 2924, or a declaration or affidavit filed in any court
22 relative to a foreclosure proceeding shall be accurate and complete and supported
23 by competent and reliable evidence.”

24 124. Further, Section 2924.17(b) of the California Civil Code provides that
25 “Before recording or filing any of the documents described in subdivision (a), a
26 mortgage servicer shall ensure that it has reviewed competent and reliable
27 evidence to substantiate the borrower's default and the right to foreclose, including
28 the borrower's loan status and loan information.”

1 125. Defendants, prior to taking the actions herein alleged, did not ensure
2 as required by statute that they had reviewed competent and reliable evidence
3 substantiating their legal authority to record, either themselves or on their behalf,
4 the Notice of Default and other related documents specified herein.

5 126. As described above, Defendants' conduct is also unlawful in that it
6 violated California's Rosenthal Fair Debt Collection Practices Act ("Rosenthal
7 Act") which prohibits creditors and debt collectors from, among other things,
8 making false, deceptive, or misleading representations in an effort to collect a
9 debt. Cal. Civ. Code Section 1788 et seq.

10 127. As alleged above, Defendants' conduct also violated various
11 provisions of RESPA (12 U.S.C. § 2605(e)) as well as TILA (15 U.S.C. §
12 1641(g)).

13 128. A business act or practice is "unfair" under the UCL if the reasons,
14 justifications, and motives of the alleged wrongdoer are outweighed by the gravity
15 of the harm to the alleged victims.

16 129. Defendants committed, and continue to commit, "unfair" business
17 acts or practices by, among other things: (a) engaging in conduct for which the
18 utility of the conduct, if any, is outweighed by the gravity of the consequences to
19 the Plaintiffs and all other Class members; (b) engaging in conduct that is
20 immoral, unethical, oppressive, unscrupulous, or substantially injurious to
21 Plaintiffs and all other Class members; and (c) engaging in conduct that
22 undermines or violates the spirit or intent of the laws that this Complaint invokes.

23 130. Specifically, Defendants Caliber, US Bank, and LSF9 engaged in
24 unfair business acts or practices in violation of the UCL by representing
25 themselves as having the legal right to collect payments from Plaintiffs and Class
26 members and to initiate foreclosure on their real properties. As alleged herein,
27 Defendants Caliber, US Bank, and LSF9 falsely represented the character and
28 amount of debts to the Plaintiffs and Class members and used false representations

1 or deceptive means, including the knowing preparation of false endorsements and
2 assignments of the Note, to collect or attempt to collect those debts. Accordingly,
3 Defendants could not demonstrate that they had the legal right to enforce the
4 alleged debt nor could they validate the correct amount of any debt on behalf of
5 the purported owner of the underlying Notes or Deeds of Trust on Plaintiffs' and
6 other Class members' homes.

7 131. These acts and practices are unfair because they caused Plaintiffs and
8 all other Class members to falsely believe that Defendants were the proper party to
9 collect debts on behalf of or as the owner of the beneficial interest under the Deed
10 of Trust and, ultimately, had the authority to initiate foreclosure on their home. As
11 a result, Plaintiffs and all other Class members were induced to believe that
12 Defendants Caliber, US Bank, and LSF9 were able to legally collect on their
13 mortgage debt, as well as the parties with the legal capacity to institute the
14 recording of NODs on their homes, forcing Gigi, and on information and belief,
15 Class members, to incur fees and costs and take legal action to prevent the
16 threatened foreclosure on her home.

17 132. The gravity of harm to Plaintiffs and Class members resulting from
18 these unfair acts and practices outweighed any business justifications for
19 Defendants' deceptive acts and practices. By committing the acts and practices
20 alleged herein, Defendants engaged in unfair business practices within the
21 meaning of the UCL. Such acts and violations have not abated and will continue
22 to occur unless enjoined.

23 133. A business act or practice is "fraudulent" under the UCL if it is likely
24 to deceive members of the consuming public.

25 134. Defendants Caliber, US Bank, and Defendant LSF9's
26 misrepresentations regarding their rights, standing and authority, as set forth
27 above, were false, misleading, and likely to deceive the public within the meaning
28 of California Business and Professions Code Section 17200.

1 135. Defendants' misrepresentations were made with knowledge of their
2 effect, and were done to induce Plaintiffs and Class members to believe that they
3 owed Defendants monies and that Defendants had the right to foreclose on their
4 home when they did not have such legal right because they did not have the
5 standing or authority to collect, nor could they validate the amount of the debt
6 allegedly owed.

7 136. Plaintiffs and all other Class members reasonably relied and
8 reasonably expected that Defendants would comply with the law, to deal honestly
9 with them and to comply with the provisions of the Rosenthal Act and the HBOR.

10 137. As further described above, Section 1692e of the FDCPA provides
11 that a debt collector may not use any "false, deceptive, or misleading
12 representation or means in connection with the collection of any debt including:
13 (2) The false representation of (A) the character, amount or legal status of any
14 debt...." 15 U.S.C. § 1692e (2)(A).

15 138. Section 1692e (10) further provides that "[t]he use of any false
16 representation or deceptive means to collect or attempt to collect any debt..." is
17 conduct in violation of that Section. Id. at § 1692e (10).

18 139. On information and belief, and as alleged herein, Defendants Caliber,
19 US Bank, and LSF9 knew or had reason to know that documents and information,
20 including but not limited to the assignments of deed of trust or substitutions of
21 trustee, and endorsements of the Promissory Note, were not valid to establish their
22 legal right to collect payments from Plaintiffs and Class members or to seek to
23 foreclose on their properties. They also knew they lacked documentation that
24 would enable them to validate the nature and extent of the debt allegedly owed by
25 Plaintiffs and Class members, which Defendants were seeking to collect.
26 Accordingly, Defendants cannot establish their legal right to collect payments
27 from Plaintiffs and Class members or their right to foreclose upon the properties.

28

1 140. Without the ability to establish their legal right to collect payments or
2 foreclose, Defendants have engaged in debt collection activities in violation of the
3 Rosenthal Act, California Civil Code Section 1788.10 et seq., and by implication,
4 the FDCPA, by, among other things: (a) misstating the character, amount or legal
5 status of the debt they collected or sought to collect from Plaintiffs and Class
6 members; (b) threatening to take or did take action (initiating foreclosure) that
7 cannot be legally taken given their inability to establish their authority to do so;
8 and (c) using false representations or deceptive means (representing they had
9 standing to take the actions they were taking when the rights they seek to enforce
10 were not assigned to them) to collect or attempt to collect the debt from Plaintiffs
11 and Class members.

12 141. As alleged herein, Defendants Caliber and LSF9 falsely represented
13 the character and amount of debts to the Plaintiffs and Class members and used
14 false representations or deceptive means to collect or attempt to collect those debts
15 in that they could not demonstrate that they had the legal right to collect any debt
16 on behalf of the purported owner of the underlying Note or Deed of Trust on the
17 property.

18 142. Plaintiffs and all other Class members have suffered injury in fact and
19 suffered monetary loss as a direct result of Defendants' conduct described herein.
20 Specifically, Plaintiffs and all other Class members have incurred and will
21 continue to incur legal fees and costs in order to prevent the wrongful loss of their
22 property.

23 143. Under Section 17203 of the Business & Professions Code, Plaintiffs
24 and all Class members are entitled to (a) restitution and disgorgement of all
25 unjustly retained monies; (b) equitable relief; (c) pre- and post-judgment interest at
26 the highest rate allowable by law; (d) payment of attorneys' fees and costs
27 pursuant to Section 1021.5 of the California Code of Civil Procedure; and (e) any
28 other relief this Court deems proper.

PRAYER FOR RELIEF

Plaintiffs, individually and on behalf and the Class, pray for relief as follows:

1. On all claims for relief for compensatory damages;
2. On the First Claim for Relief for an injunction restraining the material violations of the HBOR by the Defendants, including an injunction preventing Defendants from proceeding with any foreclosure with respect to Class members' properties until such time as Defendants have corrected and remedied the material violations of the HBOR as set forth herein;
3. On all claims for relief for costs of suit incurred herein;
4. For civil penalties pursuant to statute and/or reasonable attorneys' fees where provided for by law and according to proof; and
5. For any and all other and further relief as the court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all claims so triable.

ZIMMERMAN REED, LLP

Dated: May 17, 2017

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